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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

MAPLE CREEK RANCH, Plaintiff, Cross-defendant and Respondent, v. THOMAS HANS FOERSTERLING et al., Defendants, Cross-complainants and Appellants.	A141015 (Humboldt County Super. Ct. No. DR100099)

Thomas and Elizabeth Foersterling own a house and 28 acres of land adjoining property owned by Maple Creek Ranch (MCR) in Humboldt County. According to a land survey conducted on behalf of MCR in 2008, a portion of the Foersterlings' house and an additional six acres of land claimed by the Foersterlings as part of their property actually fell on MCR's side of the common boundary. MCR sued to quiet title and the Foersterlings cross-complained for declaratory relief and to quiet title based on adverse possession and other theories. Following a court trial, the trial court ruled in favor of MCR, ordered the Foersterlings to pay compensation to MCR for the value of MCR's property encroached upon by their house, and quieted title to the disputed six acres in favor of MCR. The Foersterlings contend the judgment is contrary to the evidence and the law, and the trial proceedings were unfair. We affirm the judgment.

I. BACKGROUND

MCR owns a 1,000-acre ranch in the Butler Valley area of Humboldt County, California. The Foersterlings own adjoining property on the southwestern boundary of MCR's ranch, consisting of approximately 28 acres, which they acquired in 1988. MCR acquired the parcel bordering the Foersterlings' property in May 1993 from Victor Guynup.

MCR had a land survey performed by surveyor Barry Kolstad in May 2008 (Kolstad survey). According to the Kolstad survey, the Foersterlings' house extends over the boundary line of MCR's property by approximately 12.5 feet at the north end of their house, and 4.5 feet at the south end of the house. The survey also shows an adjacent area of approximately six acres of land on MCR's side of the boundary that is claimed, possessed, and occupied by the Foersterlings. The Foersterlings disputed the accuracy of the Kolstad survey when informed of its results, but they did not, at any time, obtain another survey of their property or the subject boundary line.

After attempts to reach a settlement were unsuccessful, MCR filed the present action on February 10, 2010 to quiet title and establish the boundary line between the MCR property and the Foersterlings' property. The Foersterlings cross-complained for declaratory relief and to quiet title based on theories of agreed boundary, adverse possession, and prescriptive easement.

Following a court trial commencing on December 28, 2011, the court issued a tentative decision, later adopted as its final statement of decision, finding MCR had sustained its burden of proving its ownership and entitlement to possession of the disputed property. On the cross-complaint, the court rejected the Foersterlings' agreed boundary theory, finding the evidence failed to establish there was uncertainty as to the true boundary line or an agreement between the Foersterlings and Guynup to fix the location of the boundary line. Regarding adverse possession, the court found the evidence showed MCR, not the Foersterlings, paid the taxes assessed on the disputed land—the portion of MCR's land lying under the Foersterlings residence and the six

acres of MCR land fenced in and occupied by the Foersterlings.[1] The court rejected the Foersterlings' prescriptive easement theory because their use of the disputed areas was so comprehensive as to constitute an estate in the land rather than a right to the specific use of MCR's property. The court held the Foersterlings could not avoid the requirement to prove the elements of adverse possession, including the statutory element of paying taxes on the property, by claiming a prescriptive easement.

Regarding the land underneath the Foersterlings' residence, the court accepted MCR's offer to stipulate the encroachment constituted a good faith improvement on MCR's property for purposes of Code of Civil Procedure sections 871.1 and 871.5, and found the appropriate remedy for the encroachment would be to award MCR money damages based on the value of the land taken by the encroachment plus any setbacks that would be required by the county. On May 6, 2013, the court entered an interlocutory judgment quieting title to the disputed six acres and appointing a referee to determine (1) the area of MCR's land occupied by the encroachment of the Foersterlings' residence, (2) the appropriate setbacks required by the county associated with the Foersterlings' residence, and (3) the fair market value of the affected land.

The referee reported the fair market value of the affected land, determined to be 3,832 square feet in size, was $805.[2] A judgment adopting the referee's recommendations on the reserved issues concerning good faith improver damages and border adjustments was entered on December 20, 2013, and notice of entry of that judgment was served on December 23, 2013. The Foersterlings filed a timely notice of appeal from the judgment on February 10, 2014.

II. DISCUSSION

With much duplication and overlap, the Foersterlings group their arguments under three headings: "Violation of the Statute of Limitations," "Violation of Real Property Rights," and "Inequitable Action." We address the arguments as set forth below.

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[1] MCR did not contend it paid any taxes on *improvements* to these disputed areas.

[2] The 3,832 square feet included 313 square feet for the residence and 3,519 in setbacks.

A. *Standard of Review*

On appeal from a judgment entered after a court trial, we review factual determinations for substantial evidence. (*Bickel v. City of Piedmont* (1997) 16 Cal.4th 1040, 1053, superseded by statute on another ground as stated in *DeBerard Properties, Ltd. v. Lim* (1999) 20 Cal.4th 659, 668.) "Where findings of fact are challenged on a civil appeal . . . '. . . the power of an appellate court begins and ends with a determination as to whether there is any substantial evidence, contradicted or uncontradicted,' to support the findings below. [Citation.] We must therefore view the evidence in the light most favorable to the prevailing party, giving it the benefit of every reasonable inference and resolving all conflicts in its favor . . . ." (*Jessup Farms v. Baldwin* (1983) 33 Cal.3d 639, 660 citing *Crawford v. Southern Pacific Co.* (1935) 3 Cal.2d 427, 429.)

On questions of law based on undisputed facts, we employ a de novo standard of review. (*People ex rel. Lockyer v. Shamrock Foods Co.* (2000) 24 Cal.4th 415, 432.)

B. *Location of Common Boundary*

At trial, both of the Foersterlings testified they were not contesting the Kolstad survey, and they presented no expert witness testimony contradicting it. On appeal, the Foersterlings attack the Kolstad survey at length, contending it erroneously rejected earlier surveys, ignored the controlling corner monuments and fence line, and created a totally different boundary. Even assuming for the sake of analysis the Foersterlings preserved their present objections to the accuracy of the Kolstad survey, substantial evidence supports the trial court's finding that it establishes the correct boundary between MCR's property and the Foersterlings' property.

Kolstad testified in detail about the methodology he used in conducting the survey, including the site visits and measurements he made, the deeds and surveys he reviewed, and his reasons for choosing the two corner locations to the north and south that he believed established the boundary line between the two properties. Kolstad testified the fence line the Foersterlings maintain is the correct boundary carried no weight as a boundary line. He explained the fence was far removed from the boundary defined in the

deed,[3] and extremely meandering in direction, showing it could not have been built along a surveyed boundary. Kolstad testified in some detail about his reasons for rejecting a temporary corner identified by surveyor A.B. Bones in 1946, an issue the Foersterlings raise in this appeal. He pointed out that if he had chosen that corner as the northernmost point on the boundary line it would have moved the common boundary 40 feet to the east, missing the Foersterlings' house by 13 feet. That would have resolved the encroachment problem but not the occupation of the adjacent six acres which, except for a small sliver, would still be on MCR's side of the north-south boundary. Kolstad testified if the fence line was used as the boundary, the Foersterlings would have 34 acres of property rather than the 28 acres they purchased in 1988.

The Kolstad survey was recorded on July 30, 2009. A copy of his survey map was admitted in evidence without objection.

In our view, Kolstad's testimony and survey map constitute substantial evidence supporting the trial court's finding that his survey "located the correct boundary line between the real property owned by [MCR] and the adjoining real property owned by the Foersterlings." The fact other evidence in the record may have supported a different boundary is immaterial. Under the substantial evidence rule, we cannot reweigh the evidence, but must resolve all conflicts in favor of the prevailing party. (*Steele v. Youthful Offender Parole Bd.* (2008) 162 Cal.App.4th 1241, 1251–1252.)

C. *Agreed Boundary*

Regardless of the boundary determined by the Kolstad survey, the Foersterlings maintain the fence line establishes the correct boundary between the properties under the

[3] MCR's deed described its land adjoining the Foersterlings' as: "The *Southwest* Quarter of the Northeast Quarter of Section 6, Township 4 North, Range 3 East, Humboldt Meridian. [¶] (APN 315-011-09)" (Italics added.) The Foersterlings' deed describes their property as: "That portion of the *Southeast* Quarter of the Northwest Quarter of Section 6, Township 4 North, Range 3 East, Humboldt Meridian, lying Northeasterly of the center line of the Mad River." (Italics added.) The deed identifies the assessor's parcel number for that property as No. 315-011-08 (hereafter APN 315-011-08).

agreed boundary doctrine. The Foersterlings rely on the asserted fact the fence was "accepted and acquiesced to by all coterminous owners over all the years there had been a shared boundary."

"The agreed-boundary doctrine constitutes a firmly established exception to the general rule that accords determinative legal effect to the description of land contained in a deed." (*Bryant v. Blevins* (1994) 9 Cal.4th 47, 54.) "Although the agreed-boundary doctrine is well established in California, our case law has recognized that the doctrine properly may be invoked only under carefully specified circumstances. . . . 'The requirements of proof necessary to establish a title by agreed boundary are well settled by the decisions in this state. [Citations.] The doctrine requires that there be [(1)] an uncertainty as to the true boundary line, [(2)] an agreement between the coterminous owners fixing the line, and [(3)] acceptance and acquiescence in the line so fixed for a period equal to the statute of limitations or under such circumstances that substantial loss would be caused by a change of its position.' " (*Id.* at p. 55.)

Where, as here, the true boundary is ascertainable from the legal description set forth in a deed or survey, the courts require more than a mere inference of agreement to a different boundary evidenced by fences or foliage. (*Bryant v. Blevins*, *supra*, 9 Cal.4th at p. 55.) The party relying on an old fence as an agreed boundary has the burden of providing direct evidence the fence was built to resolve uncertainty or disagreement about the true boundary line, as distinguished from some other purpose, such as to control livestock or for aesthetic or other reasons. (*Id.* at pp. 58, 59.) "[W]hen existing legal records provide a basis for fixing the boundary, there is no justification for inferring [from long acquiescence in a fence boundary alone], without additional evidence, that the prior owners were uncertain as to the location of the true boundary or that they agreed to fix their common boundary at the location of a fence." (*Id.* at p. 58; see *Armitage v. Decker* (1990) 218 Cal.App.3d 887, 901–904 [evidence of long-standing acquiescence in fence as the boundary between adjoining properties was insufficient to infer the fence had been built to resolve uncertainty as to the boundary line].)

Here, the Foersterlings' witness, Richard Borges, a longtime employee of MCR's predecessor, Victor Guynup, testified he knew of no dispute between Guynup and the Foersterlings or their predecessors over the location of the boundary line between the properties. Mr. Foersterling also testified he never had such a dispute with Guynup or knew of any dispute involving his predecessors with Guynup or Guynup's predecessors. As discussed earlier, Kolstad observed a meandering fence, much of which was down on the ground, which appeared to be a "convenience" fence erected over rough terrain for a purpose other than marking a boundary. We find no evidence in the record establishing the fence was erected to resolve any uncertainty or disagreement between prior owners over the boundary between the properties.

The record supports the trial court's finding that the Foersterlings failed to establish an agreed boundary.

D. *Adverse Possession*

A judgment of adverse possession requires proof of five elements: (1) actual possession with reasonable notice to the owner, (2) hostile to the owner's title, (3) with a claim of right or title, (4) for five years without interruption, and (5) payment of taxes levied and assessed upon the property during that period. (*Dimmick v. Dimmick* (1962) 58 Cal.2d 417, 421.) Section 325 of the Code of Civil Procedure provides in relevant part: "In no case shall adverse possession be considered established under the provision of any section of this code, unless it shall be shown that the land has been occupied and claimed for the period of five years continuously, and the party or persons, their predecessors and grantors, *have timely paid all state, county, or municipal taxes that have been levied and assessed upon the land* for the period of five years during which the land has been occupied and claimed." (*Id.*, subd. (b), italics added.) The burden is on the adverse claimant of the fee to establish that no taxes were assessed against the land or that if assessed he paid them. (*Gilardi v. Hallam* (1981) 30 Cal.3d 317, 326 (*Gilardi*).)

As noted earlier, the trial court found the evidence did not establish the Foersterlings paid all taxes assessed against the real property at issue. There was no testimony from the tax assessor in this case or other direct evidence the Foersterlings paid

taxes on any part of MCR's land as described in its deed. MCR submitted property tax receipts showing MCR paid taxes on the land in APN 315-011-09 dating back to 1993. MCR does not contend it paid any taxes on any *improvements* to these disputed areas. The Foersterlings' tax records showed the Foersterlings paid taxes on land and improvements in their deeded acreage, APN 315-011-08, and for the house. The Foersterlings did not produce evidence they had been assessed based on a visual inspection of the lands they occupied as opposed to the deed description.

The Foersterlings point to a $17,000 increase in the 1996–1997 assessed value of improvements to their property following completion of grading and other improvements for an athletic field and drainage system they assert lies on the MCR side of the Kolstad boundary line. However, there was no evidence showing the increase was attributable to that work, or that the land occupied by the athletic field and drainage system was assessed to the Foersterlings. In our view this evidence was insufficient to trigger a "natural inference" the assessor "did not base his assessment on the true boundary but valued the land and improvements visibly possessed by the claimants." (*Raab v. Casper* (1975) 51 Cal.App.3d 866, 878; *Gilardi*, *supra*, 30 Cal.3d at p. 327.) Further, any such inference would be dispelled where, as in this case, there is no evidence the property was assessed based on a visual inspection. (*Gilardi*, at p. 327.)

Based on this state of the record, the trial court was entitled to conclude the Foersterlings (1) failed to meet their burden of proving they paid all taxes assessed on the disputed property and (2) were therefore not entitled to relief based on an adverse possession theory.

E. *Prescriptive Easement*

The Foersterlings contend they established all elements of prescriptive easement as well as adverse possession. An easement is an interest in the land of another, which entitles the owner of the easement to *a limited use or enjoyment* of the other's land. (6 Miller & Starr, Cal. Real Estate (3d ed. 2006) § 15:1, p. 15-5, italics added.) To establish a prescriptive easement, the claimant must prove use of the property for the statutory period of five years, which use has been (1) open and notorious, (2) continuous

and uninterrupted, (3) hostile to the true owner, and (4) under a claim of right. (*Mehdizadeh v. Mincer* (1996) 46 Cal.App.4th 1296, 1305 (*Mehdizadeh*).) Here, the trial court found the Foersterlings had presented evidence establishing a prescriptive use of MCR's property. However, the court also found the nature of the use was exclusive, rather than limited. The court held such exclusive use could not create a prescriptive easement under applicable case law. We agree.

Mehdizadeh, cited by the trial court, explains the distinction on which the trial court relied in this case: "A prescriptive use of land culminates in an easement (i.e., an incorporeal interest). This interest differs from a corporeal interest, such as that created by adverse possession or the agreed-boundary doctrine, which creates a change in title or ownership. Where an incorporeal interest in the use of land becomes so comprehensive as to supply the equivalent of ownership, and conveys an unlimited use of real property, it constitutes an estate, not an easement." (*Mehdizadeh, supra,* 46 Cal.App.4th at p. 1306.)

According to *Kapner v. Meadowlark Ranch Assn.* (2004) 116 Cal.App.4th 1182, the case law has uniformly rejected claims of prescriptive easement predicated on enclosing and possessing land for exclusive use: "A prescriptive easement requires use of land that is open and notorious, hostile to the true owner and continuous for five years. [Citation.] Unlike adverse possession, a prescriptive easement does not require the payment of taxes. [Citation.] *It is not an ownership right, but a right to a specific use of another's property.* [Citation.] *But Kapner's use of the land was not in the nature of an easement. Instead, he enclosed and possessed the land in question*. [¶] To escape the tax requirement for adverse possession, some claimants who have exercised what amounts to possessory rights over parts of neighboring parcels, have claimed a prescriptive easement. *Courts uniformly have rejected the claim*. [Citations.] These cases rest on the traditional distinction between easements and possessory interests." (*Id.* at pp. 1186–1187, italics added.)

In this case, the Foersterlings built a house encroaching on MCR's land and fenced in and possessed another six acres belonging to MCR. They do not claim a right to use

MCR's property for a limited, specific purpose, such as the right to cross the land, but have asserted exclusive dominion over the subject properties for all purposes. Absent proof of the payment of taxes as well as the other elements of adverse possession, real property law does not permit a party to obtain a fee simple estate or its equivalent by occupying a neighbor's property: "[W]here an easement would create the practical equivalent of an estate, the party must satisfy the elements of an adverse possession, rather than a prescriptive easement." (*Otay Water Dist. v. Beckwith* (1991) 1 Cal.App.4th 1041, 1048 (*Otay*).)

Otay, cited by the Foersterlings, recognizes a narrow exception to the general rule that a prescriptive easement cannot create a right to exclusive use, but that exception has no application here. In *Otay*, the trial court granted the plaintiff—a public water company—an *exclusive* prescriptive easement to maintain a reservoir that had been operated on part of the defendants' property for more than 20 years. (*Otay*, *supra*, 1 Cal.App.4th at pp. 1044–1045.) One of the defendants in the case contended the trial court erred because an easement, by definition, could not be exclusive. (*Id*. at p. 1047.) The appellate court disagreed, holding that where the use during the statutory period was exclusive, a court may properly determine the future use of the prescriptive easement could continue to be exclusive. (*Ibid*.) The court explained an exclusive easement was justified because the defendant's proposed recreational use would unreasonably interfere with the continued operation of the reservoir—an exclusive use essential to prevent potential contamination of the water supply and for other health and safety purposes. (*Id*. at pp. 1047–1048.) The court reasoned the exclusive easement for maintenance of the reservoir was not a fee simple estate because the defendant could take back his property if the plaintiff deviated from the historical use. (*Id.* at p. 1048.)

Otay's holding was analyzed in *Silacci v. Abramson* (1996) 45 Cal.App.4th 558 (*Silacci*), which held *Otay* must be limited to its unusual facts—a public water company's right to keep drinking water safe from contamination which took precedence over the rights of the servient property owner. (*Silacci*, at pp. 563–564; see *Mehdizadeh*, *supra*, 46 Cal.App.4th at p. 1307 [*Otay* must be limited to circumstances involving public health

and safety].) We agree with *Silacci* and *Mehdizadeh* that *Otay* does not extend beyond the narrow context of a public necessity. *Silacci* and *Mehdizadeh*, like the present case, arise from a much more common factual scenario—a landowner fencing in property belonging to a neighbor and using it as his own. In *Silacci*, the Court of Appeal reversed a trial court decision granting the defendant an "exclusive prescriptive easement" over land the defendant had fenced in and used as his backyard: "To permit Abramson to acquire possession of Silacci's land, and to call the acquisition an exclusive prescriptive easement, perverts the classical distinction in real property law between ownership and use. The trial court's order here amounted to giving Silacci's land completely, without reservation, to Abramson." (*Id.* at p. 564; see *Mehdizadeh*, at pp. 1304–1309; *Harrison v. Welch* (2004) 116 Cal.App.4th 1084, 1090–1093 (*Harrison*) [encroaching woodshed that completely prevented true owner from using that portion of his land cannot give rise to a prescriptive easement].) While *Mehdizadeh* recognizes an intent *by the servient property owner* to create an exclusive easement can be shown in rare circumstances, the case does not suggest such an easement can be created by an occupation of the property hostile to the true owner. (See *Mehdizadeh*, at p. 1308.)

The Foersterlings also cite *Connolly v. Trabue* (2012) 204 Cal.App.4th 1154 (*Connolly*). The central issue in *Connolly* was whether laches barred suit to establish a claim of prescriptive easement over a property used for many years by the plaintiff and his predecessors for ranching purposes. (*Id.* at pp. 1156–1158.) In passing, the Court of Appeal found substantial evidence supported the trial court's finding of a prescriptive easement in those circumstances. (*Id.* at pp. 1161–1162.) The facts pertaining to adverse use were essentially undisputed and no issue was raised in the case as to whether the easement the plaintiff sought to establish was in substance exclusive of the true owner's rights, and equivalent to fee ownership. *Connolly* does not undermine the principles stated in *Silacci* and the other cases discussed above because "[a]n opinion is not authority for a point not raised, considered, or resolved therein." (*Styne v. Stevens* (2001) 26 Cal.4th 42, 57.)

We find no error in the trial court's rejection of the Foersterlings' prescriptive easement claim. The court correctly applied the general rule recognized in *Silacci*, *Mehdizadeh*, and *Harrison* that the hostile occupation of another's property cannot create exclusive property rights absent proof of all elements of adverse possession, including payment of taxes.

F. *Fairness of Proceedings*

The Foersterlings claim the trial was unfair and prejudicial because they were self-represented. The court did at times explain certain rules of procedure to them, such as their right to subpoena witnesses and rules limiting their examination of witnesses. However, self-represented litigants are in general held to the same standard as a licensed attorney. "Under the law, a party may choose to act as his or her own attorney. [Citations.] '[S]uch a party is to be treated like any other party and is entitled to the same, but no greater consideration than other litigants and attorneys.' " (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246–1247.) In our view, the trial court handled evidentiary objections fairly and did not, as the Foersterlings assert, let MCR's attorney engage in abusive courtroom conduct. At bottom, the Foersterlings merely disagree with the trial court's rulings and its assessment of the evidence. For the reasons we have stated, they fail to demonstrate the trial court's decision was unsupported by the evidence or contrary to the law.

III. DISPOSITION

The judgment is affirmed.

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Margulies, J.

We concur:

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Humes, P.J.

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Dondero, J.